

**FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ABDULLAH ALTAYEH,)	FILED: AUGUST 18, 2008
)	08CV4689
)	JUDGE LEFKOW
Petitioner,)	MAGISTRATE JUDGE NOLAN
)	
v.)	Case Number: BER
)	
UNITED STATES DEPARTMENT OF)	
HOMELAND SECURITY, CITIZENSHIP)	Alien #: 078-851-866
AND IMMIGRANT SERVICES,)	
DON FERGUSON, in his official capacity)	
as District Director of Chicago District)	
Office, MICHAEL MUKASEY,)	
Attorney General of the United States,)	
MICHAEL CHERTOFF, Secretary of the)	
Department of Homeland Security, and)	
UNITED STATES OF AMERICA,)	
)	
Respondents)	

PETITION FOR MANDAMUS RELIEF

NOW COMES the Petitioner, ABDULLAH ALTAYEH, by and through his attorneys, CARPENTER & CAPT, CHTD., and petitions this Court to Order the U.S. CIS to Adjudicate Petitioner's previously filed Naturalization Application, or grant him naturalization *sua sponte* if the U.S. CIS continues to neglect processing his application. Petitioner states the following in support of this Petition:

NATURE OF THE CASE

This action seeks an Order from the United States District Court, Northern District of Illinois, compelling the U.S. CIS's Chicago District Office to adjudicate Petitioner ABDULLAH ALTAYEH's application for naturalization. The time that has elapsed since

Petitioner's filing of his naturalization application and the present, with no activity moving towards resolution or adjudication of his filing, is unreasonable by any measure of that term.

INTRODUCTION

Mr. Altayeh currently resides at 6315 Country Club Dr., Huntington, West Virginia 25705, for the purposes of his medical residency only. He maintains his permanent address in Chicago Ridge. Mr. Altayeh gained legal permanent residency through his marriage to a United States Citizen ("USC") on May 22, 2003. *See* Permanent Resident Card, attached as Exhibit 1.

Mr. Altayeh applied for naturalization on February 28, 2006. *See* N-400 receipt notice, attached as Exhibit 2. Mr. Altayeh received notice on May 9, 2006, requesting that he appear for his initial interview on June 26, 2006. *See* interview notice, attached as Exhibit 3. He later received another notice advising him that the scheduled interview was cancelled, and that he would be notified of any rescheduling. *See* interview descheduling notice, attached as Exhibit 4. Mr. Altayeh initiated a status inquiry on October 18, 2006 to inquire on the rescheduling of his interview. USCIS responded by stating that a final decision could not be made on the application until national security checks are complete. *See* status inquiry response letter, attached at Exhibit 5. Mr. Altayeh's counsel from the Council on American-Islamic Relations sent an email directly to the USCIS Customer Service unit requesting status on the application on January 29, 2007. A customer assistance officer replied on February 22, 2007, claiming that the reason for the delay in adjudicating Mr. Altayeh's naturalization application is that the "required investigation into his background remains open." The officer also indicated that USCIS could not provide

information as to when the background check would be completed. *See* email correspondence, attached as Exhibit 6. Mr. Altayeh proceeded to have an FBI criminal record check completed. *See* attached “no arrest record” notice from the FBI dated March 4, 2008, as Exhibit 7. More than 400 calendar days have passed since the initial interview was cancelled. Mr. Altayeh has not received notice or any rescheduled interview information.

Mr. Altayeh is otherwise eligible for naturalization. Mr. Altayeh has resided continuously as a legal permanent resident in the United States for at least three [3] years, and has lived in marital union with his wife since that time. This satisfies requisite amount of time required for an applicant who obtained his lawful permanent residency through marriage to a USC. *See* INA § 319(a). He has maintained physical presence for at least half that time. *See Id.* Mr. Altayeh has good moral character, is attached to the principles of the Constitution of the United States, and is well disposed to the good order and happiness of the United States. *See* INA § 316(a)(3).

An Interoffice Memorandum of the USCIS dated February 4, 2008, imposes a 180-day limit on FBI name check processing for adjustment applications; however there is no such limit imposed on naturalization applications. Consequently, a naturalization application could be stagnant indefinitely, with the general statement that “the name check is not completed.” *See* Memorandum, attached as Exhibit 8. The government is still of course bound by the principals of the APA and of Mandamus precedent, where delays in adjudicating a naturalization application are unreasonable, as detailed *infra*.

STATEMENT OF THE CASE

Jurisdiction

1. Jurisdiction is conferred on this Court with respect to a Writ of Mandamus by 28 U.S.C. §1361, which provides for mandamus jurisdiction to compel officers and employees of the United States to perform a duty owed to the Petitioners.
2. The Agency Procedures Act (hereinafter “APA”) provides that a person “adversely affected or aggrieved by agency actions [or failure to act, *see* 5 U.S.C. §§701(b)(2), 551(13)]... is entitled to judicial review thereof.” 5 U.S.C. §702. The APA also requires the government to act within a *reasonable* amount of time. 5 U.S.C. §555(b).
3. Furthermore, the Seventh Circuit has held that INA §242(a)(2)(B)(i) does not divest courts of jurisdiction in adjustment of status cases where no actual decision was made on the merits. Iddir v. I.N.S., 301 F.3d 492, 497 (7th Cir. 2002). The Seventh Circuit held that the above-referenced section of the INA “only bars review of actual discretionary decisions to grant or deny relief under the enumerated sections.” Id.
4. In allowing a mandamus action to proceed, the Seventh Circuit favorably adopted and cited language from another court which held, that “Plaintiff is not seeking review of a decision or action, which would be barred, but is seeking remediation of the lack of action, which is not barred.” Id. at 498 (citing Nyaga v. Ashcroft, 186 F.Supp.2d 1244, 1250-53 (N.D.Ga. 2002) (Aff’d Nyaga v. Ashcroft, 323 F.3d 906 (11th Cir. 2003)). *See* El-Khader v. Monica, 366 F.3d 562, 563, n.3 (7th Cir. 2004) (Seventh Circuit held that “INS’s *final decision* ... [was] precluded from judicial

review pursuant to §1252 (a)(2)(B)(ii) (emphasis added). Because Petitioner is not challenging a decision to deny relief, the relief sought is not discretionary and in fact, is by definition a mandatory duty to adjudicate. Iddir at 497-498.

Venue

5. Pursuant to 28 U.S.C. §1391(e), venue lies in the Northern District of Illinois because this is where the Applicant resides, and where the Chicago District Office is located. This office has neglected to complete the adjudication of Petitioner's naturalization application.

The Parties

6. Abdullah Altayeh is the naturalization applicant ("Applicant") whose application for naturalization has not been adjudicated as of this date. The United States Citizenship and Immigration Service's Chicago District Office is the office responsible for the adjudication of the aforementioned application for adjustment of status. Michael Mukasey, Attorney General, is a named party pursuant to Federal Rule of Civil Procedure 4.

COUNT I: FAILURE OF THE U.S.C.I.S., formerly INS, CHICAGO DISTRICT OFFICE, TO DISCHARGE ITS DUTIES OF ADJUDICATING A PROPERLY FILED APPLICATION FOR NATURALIZATION IN A TIMELY MANNER

7. Mandamus actions can be used to compel action by an agency, so long as the action is not discretionary. An agency's decision not to act due to a policy position that effectively precludes a timely decision from being made is properly subject to an action in Mandamus. *See Ganem v. Heckler*, 746 F.2d 844 (D.C. Cir. 1984). Further, the APA provides, "The reviewing Court shall – (1) compel agency action unlawfully withheld or unreasonably delayed". 5 U.S.C. §706. This creates a right

of judicial review of agency action unlawfully withheld. Rank v. Nimmo, 677 F.2d 692, 698 (9th Cir. 1982).

This action is grounded in the Chicago District Office's neglect in adjudicating Mr. Altayeh's application for naturalization within a reasonable time. The Chicago District Office has not adjudicated the application after four and one-half years have elapsed since it was filed. This amount of time is unreasonable, especially considering that the U.S. CIS estimates its processing times as 13-15 months on naturalization applications.

8. Mandamus is an appropriate remedy here because (1) the Petitioner has a clear right to the relief sought; (2) the Respondents have a clear duty to perform; and (3) no other adequate remedy is available. *See Blaney v. United States*, 34 F.3d 509, 513 (7th Cir. 1994); *Iddir v. INS*, 301 F.3d 492, 499 (7th Cir. 2002). Each of the aforementioned elements is addressed, respectively, below:

- (1) 8 U.S.C §1430(INA §319) provides that a person who obtains status as a lawful permanent resident by reason of his or her status as a spouse of a U.S. Citizen, and who has continuously resided in the United States after being admitted for permanent residency for at least 3 years, and who has been living in marital union with his or her U.S. Citizen spouse, is eligible to apply for naturalization.
- (2) The Respondents have a duty to adjudicate properly filed applications for naturalization in a timely manner under the Administrative Procedures Act. As indicated above, 30 months have elapsed since the filing of his naturalization application, and no progress has been made towards

adjudicating the same.

Courts have consistently held that the INS has a non-discretionary duty to adjudicate applications within a reasonable time. *See Yu v. Brown*, 36 F.Supp.2d 922, 931 (D.N.M. 1999) (“All other courts addressing this question have held that INS has a non-discretionary duty to process applications for LPR status as well as all other immigration applications.”)(citing various cases); *Id.* at 932 (holding that the INS “owes Plaintiffs a non-discretionary duty to complete processing of Plaintiffs’ [LPR] applications in a reasonable time.”) There is no substantive difference between adjudicating an application for permanent residency and an application for naturalization, except that equity would compel a lawful permanent resident’s application to be treated at least equally to those filed by non-lawful permanent residents seeking that status through a petition.

- (3) No other adequate remedy is available. Petitioner has exercised exceptional patience in waiting for the Chicago District Office to adjudicate his application. He has taken reasonable steps to inquire and facilitate the adjudication of his application. Further waiting is simply not warranted.

COUNT II

ATTORNEY’S FEES AND COSTS UNDER THE EQUAL ACCESS TO JUSTICE ACT (EAJA)

Plaintiffs bringing successful actions in the nature of a mandamus or petitions for hearings on delayed naturalization determinations may be entitled to a grant of attorney’s fees and costs against the U.S.C.I.S. (legacy INS) under the Equal Access to Justice Act, 28 U.S.C. Sec . 2412 (d)(1)(A). This is so even though the United States Supreme Court has

ruled that EAJA does not authorize payment of attorney's fees to prevailing parties in administrative deportation proceedings. *See Ardestani v. INS*, 502 U.S. 129 (1991). This action is not part of an administrative deportation proceeding. Therefore it must be allowed.

To prevail under EAJA, a plaintiff must establish that he or she is a "prevailing party" in a suit against the United States or a federal agency or official. Fees are awarded unless the court finds that the position of the defendant was substantially justified or that special circumstances make an award unjust. To be a "prevailing party", the plaintiff need only be successful on a significant issue in the litigation. While the "catalyst doctrine" was abolished by our Supreme Court in Buckhannon Home Health Care v. West Virginia Department of Health, if this case is decided at a hearing on this petition, then Mr. Altayeh will be entitled to EAJA fees and costs.

WHEREFORE, Petitioner respectfully prays this Honorable Court to adjudicate Mr. Altayeh's naturalization application in court, or in the alternative, enter an order directing the U.S. CIS, Chicago District Office, to adjudicate his naturalization application in the next fourteen (14) days.

Respectfully Submitted,

Robert Carpenter
One of Petitioner's Attorneys

CARPENTER & CAPT, CHTD.
Attorneys for Petitioners
53 W. Jackson Blvd., Ste. 1752
Chicago, IL 60604
t (312) 803-5110
f (312) 803-5112
e c&clawyers@carpenterandcapt.com
IL Attorney Registration #: 6210049

MAGISTRATE JUDGE NOLAN

PERMANENT RESIDENT CARD

INS A# 078-851-866

09/17/71 HRS M

Kurzeit

Resident Since: 05/22/03

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AL<TAYEH<<ABDULLAH<<<<<<<<<<<



Receipt			NOTICE DATE March 08, 2006
CASE TYPE N400 Application For Naturalization			INS A# A 078 851 866
APPLICATION NUMBER LIN*000875501	RECEIVED DATE February 28, 2006	PRIORITY DATE February 28, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ABDULLAH ALTAYEH # 15 9829 S NOTTINGHAM AVE CHICAGO RIDGE IL 60415		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p>-----</p> <p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: September 17, 1971 Address Where You Live: 9829 S NOTTINGHAM AVE # 15 CHICAGO RIDGE IL 60415</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p> <p>-----</p>			
<p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p>			
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-		INS Customer Service Number: (800) 375-5283	
LIN\$000823173		APPLICANT COPY	
08CV4689 JUDGE LEFKOW MAGISTRATE JUDGE NOLAN			

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JUDGE LEFKOW
MAGISTRATE JUDGE NOLAN

BR

U.S. Department of Homeland Security
Nebraska Service Center
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services

Wednesday, October 25, 2006

ABDULLAH ALTAYEH
9829 S NOTTINGHAM AVE # 15
CHICAGO IL 60415

Dear abdullah altayeh:

On 10/18/2006 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:--

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	N400
Filing date:	Information not available
Receipt #:	lin-00-087-5501
Beneficiary (if you filed for someone else):	altayeh, abdullah
Your USCIS Account Number (A-number):	A078851866
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

A final decision cannot be made on any application for naturalization until national security checks are complete and the local CIS office receives a response.

This process is sometimes very lengthy. Authorities in the Washington, D.C. area complete the checks and this office has no control over the process. In fact, it is not unusual for the checks to take well over six months.

It is important to understand that your case is not the only one pending security checks. There are hundreds of cases pending national security checks and a significant portion of the checks take more than six months. Cases with pending security checks are queried every week to ensure that those that have cleared are acted on in a timely manner.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

Christina Abraham

BR

From: CAO PILOT [CAO.Pilot@dhs.gov]
Sent: Thursday, February 22, 2007 3:56 PM
To: Christina Abraham
Subject: RE: AILA Inquiry
Follow Up Flag: Follow up
Flag Status: Red
Attachments: National Correspondence Unit Feedback.doc

Dear Ms. Abraham:

Thank you for your email to the Citizenship and Immigration Services (USCIS). The following response is provided for your information/action.

The processing of your client, Mr. Abdullah Altayeh's naturalization case has been delayed. A check of our records establishes that his case is not yet ready for a decision, as the required investigation into his background remains open.

Unfortunately, we are unable to provide you information on when the background check will be completed. Until the background investigation is completed, we cannot move forward on his case. These background checks are required to be completed on all applicants who apply for the immigration benefit he is seeking. We will make every effort to make a decision on this case, as soon as the background checks are completed. If he does not receive a decision, or other notice of action from us within 6 months of the date of this letter, please contact customer service at 1-800-375-5283.

We trust that this information is helpful.

Sincerely,

R.E. DeShazor
Customer Assistance
U.S. Citizenship and Immigration Services

-----Original Message-----

From: Christina Abraham [mailto:civilrights@calrchicago.org]
Sent: Monday, January 29, 2007 4:53 PM
To: Pilot, Cao
Subject: AILA Inquiry

RE: Abdullah Altayeh, A 078 851 866

Dear Sir or Madam:

I am writing on behalf of one of our clients. Abdullah Altayeh was scheduled to appear for the interview for naturalization on June 26, 2006. On June 15, 2006 he was given notice that his interview had been

2/27/2007

cancelled. I would like to inquire into the current status of our client's application; in particular whether the status is still pending a background investigation, and when our client will be scheduled for an interview.

Attached you will find a Notice of Entry of Appearance as Attorney (Form G-28), which authorizes our representation and advocacy on behalf of Abdullah Altayeh.

I look forward to your timely response.

Sincerely,

Christina Abraham
Civil Rights Coordinator
Council on American-Islamic Relations (CAIR)-Chicago
28 East Jackson Boulevard
Suite 1410
Chicago, IL 60604
Tel: 312-212-1520
Fax: 312-212-1530
E-mail: civilrights@cairchicago.org
www.cairchicago.org

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2/27/2007

JUDGE LEFKOW

MAGISTRATE JUDGE NOLAN

ALTAYEH ABDULLAH

BR

1-689* (Rev. 10-1-97)

O-REQ
G, WV

9 17 197

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FEDERAL BUREAU OF INVESTIGATION
Criminal Justice Information Services Division
CLARKSBURG, W.V. 26306

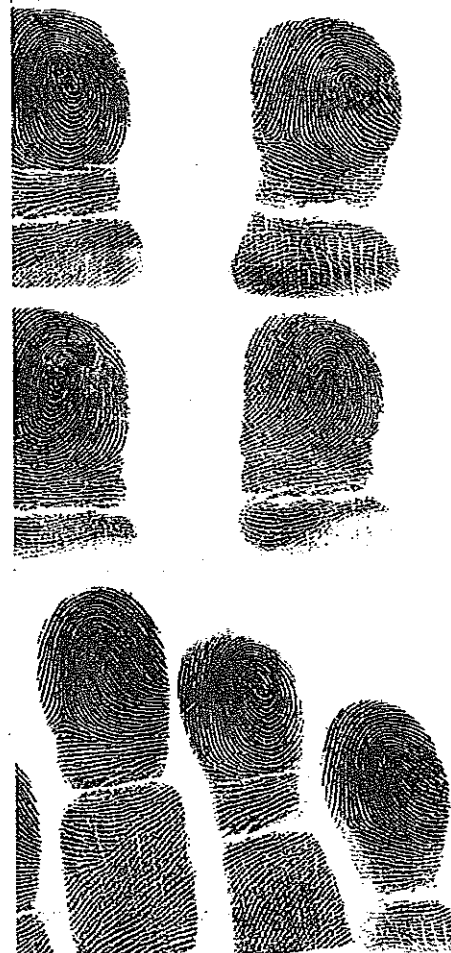
Please note the stamp on the back of the enclosed
fingerprint card indicating the results of the search of the FBI
Criminal Justice Information Services Division's files.

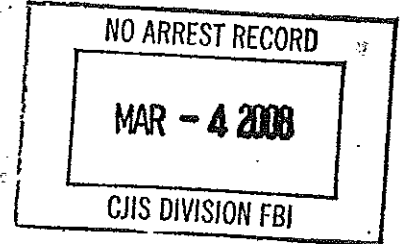
Enclosure(s)

MAR 04 2009 4 4 19

Identification and Investigative
Services Section

FBI/DOJ





MAR 10 2008 4 4 19

08CV4689

JUDGE LEFKOW

MAGISTRATE JUDGE NOLAN

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Domestic Operations of Directorate
Washington, DC 20529

BR




U.S. Citizenship
and Immigration
Services

FEB 4 - 2008

HQ 70/23 & 70/28.1

Interoffice Memorandum

TO: Field Leadership**FROM:** Michael Aytes 
Associate Director, Domestic Operations**SUBJECT:** Revised National Security Adjudication and Reporting Requirements

Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. This is done both to enhance national security and to ensure the integrity of the immigration process. USCIS has previously mandated that FBI name checks be completed and resolved before any positive adjudication can proceed on certain form types. This memorandum modifies existing guidance for applications where statutory immigration provisions allow for the detention and removal of an alien who is the subject of actionable information that is received from the FBI or other law enforcement agencies after approval of the application.

USCIS is issuing revised guidance in response to recommendations of the DHS Office of Inspector General (OIG-06-06) regarding the need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). The *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals* regulations prevent immigration judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. See 8 C.F.R. § 1003.47(g); 8 C.F.R. § 1003.1(d)(6)(i). In the context of removal proceedings, ICE has determined that FBI fingerprint checks and Interagency Border Inspection Services (IBIS) checks are the required security checks for purposes of the applicable regulations. In the unlikely event that FBI name checks reveal actionable information after the immigration judge grants an alien permanent resident status, DHS may detain and initiate removal proceedings against the permanent resident. See 8 U.S.C. § 1227; see also 8 U.S.C. § 1256 (allowing DHS to rescind an alien's adjustment of status).

Revised National Security Adjudication and Reporting Requirements

Page 2

Revised Guidance

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (I-698) is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. The FBI has committed to providing FBI name check results within this timeframe.

There is no change in the requirement that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

Pending further guidance regarding post-audit reporting and tracking requirements and modifications to associated quality assurance procedures, applications approved pursuant to this memorandum shall be held at the adjudicating office. If derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

Subject to the reporting requirements set forth in the February 16, 2007, memorandum titled "FBI Name Checks Policy and Process Clarification for Domestic Operations," an application or petition may be denied, dismissed, administratively closed, withdrawn, or referred to the Immigration Court at any time.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

Distribution List:

Regional Directors

Service Center Directors

District Directors (except foreign)

Field Officer Directors (except foreign)

National Benefits Center Director

FOR THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ABDULLAH ALTAYEH,

Petitioner,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, CITIZENSHIP
AND IMMIGRANT SERVICES,
DON FERGUSON, in his official capacity
as District Director of Chicago District
Office, MICHAEL MUKASEY,
Attorney General of the United States,
MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security, and
UNITED STATES OF AMERICA,

Respondents

Case Number:

Alien #: 078-851-866

FILED: AUGUST 18, 2008

08CV4689

JUDGE LEFKOW

MAGISTRATE JUDGE NOLAN

BR

VERIFICATION

I, ABDULLAH ALTAYEH, hereby verify that to the best of my knowledge and belief all matters
contained in the above Petition for Writ of Mandamus are true and correct.


ABDULLAH ALTAYEH

Signed and Sworn before me this 8 day of August, 2008.


Notary Public

Dated: 8/8/2008

